



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE [REDACTED] Office: California Service Center

Date:

IN RE: Applicant: [REDACTED]

JAN 02 2003

APPLICATION: Application for Permission to Reapply for Admission into the
United States after Deportation or Removal under Section
212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8
U.S.C. § 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was lawfully admitted for permanent residence on July 14, 1989. On August 15, 1993, an Order to Show Cause was served on the applicant by certified mail charging him with being deportable under former section 241(a)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(1)(A), as an alien who at the time of entry was excludable as an alien who at any time knowingly has encouraged, induced, assisted, abetted or aided any other alien to enter or to try to enter the United States in violation of law, under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i).

On October 14, 1993, the applicant was ordered deported by an immigration judge *in absentia* under former section 241(a)(1)(B) of the Act, 8 U.S.C. § 1251(a)(1)(B), as an alien who had entered the United States without inspection. A Warrant of Deportation was issued on October 15, 1993, reflecting that the applicant was deportable under the original charge in the Order to Show Cause, section 241(a)(1)(A) of the Act. The applicant was removed from the United States on October 26, 1993. The applicant seeks permission to reapply for admission after removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1181(a)(9)(A)(iii), for humanitarian reasons in order to reside with his parents.

The acting director concluded that the applicant is inadmissible to the United States as an alien who was engaged in smuggling aliens other than his spouse, parent, son or daughter and no waiver is available for such an alien. The acting director then denied the application accordingly.

On appeal, the applicant states that he had to remain outside the United States for five years and has not returned since his deportation in 1993. The applicant requests permission to return to the United States to be with his family.

Section 241(a)(1)(E) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and is now codified as section 237(a)(1)(E).

Section 212(a)(6)(E) of the Act provides that:

(i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of the law is inadmissible.

(ii) Special Rule In The Case Of Family Reunification.- Clause (i) shall not apply in the case of alien who is an eligible immigrant...was physically present in the United States on May 5, 1988, and is seeking admission as an

immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d) of the Act provides that:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964, held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien convicted of violating a law which renders him mandatorily inadmissible to the United States, and no purpose would be served in granting the application.

The record reflects that the applicant is inadmissible to the United States under section 212(a)(6)(E) of the Act, for having aiding and abetting aliens to enter the United States in violation of the law. The applicant was not convicted of this violation, however, as held in Matter of Estrada, 17 I&N Dec. 187 (BIA 1979), a conviction is not necessary to a finding of deportability under former section 241(a)(13), 8 U.S.C. § 1251(a)(13), presently codified as section 237(a)(1)(E) of the Act. The alien's own testimony and affidavit in the record regarding his role in bringing aliens into the United States in violation of law is sufficient evidence of deportability.

The applicant was stopped at a highway checkpoint on August 14, 1993, driving a vehicle with an adult female and two children as passengers. After questioning, the applicant stated in his affidavit that, as a favor for a friend, he drove the friend's

vehicle to Mexicali, Mexico, and met the three individuals, who were distant relatives of the friend. Arrangements were made for the three to cross the border illegally. The applicant then drove the car back into the United States in order to pick the aliens up at a designated location.

Since the aliens were other than the applicant's spouse, parent, son, or daughter, no waiver is available for such ground of inadmissibility. Therefore, the favorable exercise of discretion in this matter is not warranted, and the appeal will be dismissed.

ORDER: The appeal is dismissed.